IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Drilling Avam Hand Pump Abhiyantrik Karamchari Sang, Jodhpur. VS. State of Raj. & Ors.

**S.B.CIVIL WRIT PETITION NO.263/1992**
under Article 226 of the Constitution of India.

Date of order : 8th Oct., 2004

P R E S E N T

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Marudhar Mridul, Senior Advocate Assisted by
Mr. R.N. Upadhyay for the petitioner.
Mr. Sunil Beniwal for Mr. M.S. Singhvi for respondents
Mr. Vimal Mathur for the respondents.
Mr. B.L. Bhati, Addl. Govt. Advocate.

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By the Court:-

This writ petition is by Drilling Avam Hand Pump Abhiyantrik Karamchari Sangh representing the workmen of P.H.E.D. Engaged in the tube -well drilling Section as Assistant Drillers.

The relief claimed by the petitioner is to

quash the orders dated 20th Dec., 1991 Annex.10 and corrigendum dated 4.1.1992 Annex.11, so far it relates to absorption of surplus employees.

The facts from the chequered history of the dispute which can be gathered from the record of these proceedings may be noticed in the first instance.

Shorn of technicalities and complexities of different expression used at different times, the litigation has primarily stemmed from the stagnation in the tube well section for drilling water for drinking purposes under Public Health Engineering Department because of post of Assistant Driller or Driller under it being not initially en-grafted in the Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967 or Rajasthan Engineering Service (Public Health Branch) Rules, 1968. It may be noticed that while the post of Assistant Driller is under subordinate service, promotion from it is to Driller, which is a post of State services

By order dated 21st Feb., 1980, the Governor directed to transfer the work relating to the tubewell drills along with its Staff to Public Health Engineering Department which was hitherto being looked after by the Ground Water Department of the State.

This order was made in pursuance of recommendations made by the Committee set up by the Government for suggesting measures for economising expenses in doing the work for providing drinking water at the Ground Water Department, which were accepted by the Government on 12.2.1980. Pursuant to this direction, the Government vide letter dated 21st Feb., 1980, which is Annex.R/7/4 in these proceedings, issued an order in its Medical and Health Department on 31st March, 1980 which is annexed as Annexure R-7/5 on record, which details the machines and employees transferred from Ground Water Department to P.H.E.D. w.e.f. 1.4.1980. According to this order, 8 rigs received from UNICEF and 8 rigs purchased from the money made available by P.H.E.D. were transferred to PHED. Secondly, under clause (3) along with these rigs the staff working on the rigs was also transferred. It also states that on these rigs if there are any vacant posts, the said posts be kept vacant under Ground Water Department and it will be filled by the P.H.E.D according to its own requirements. The transfer of staff will be of the same persons, who are is working on the machines for quite some time. Apart from the staff working on the rigs, it also envisaged that from Ground Water Department 3 Assistant Engineers, 6 Supervisors and other staff were also to be transferred to PHED.

Under clause (4) along with transfer of Rigs and staff working on the rigs it was envisaged that other vehicles in connection with that work shall also be transferred to the PHED along with their Staff and spares so that the hand pumps can be well maintained and looked after by PHED w.e.f. 1.4.1980. Apart from the aforesaid drilling rotary rigs, other rigs, other machines were also to be transferred vide clause (5) of the order by the end of July 1980. The list of staff working on rigs and to be transferred w.e.f. 1.4.1980 was also annexed with the order as schedule III.

In furtherance of this, by order dated 14.4.1980, the Chief Engineer, Ground Water Department issued directions that officer and staff connected with the hand pump construction programme under the head IV 92 capital outlay are transferred to PHED with immediate effect; their salary and other claims from 1.4.1980 would be paid by PHED.

With this exercise of transferring the hand pump rigs along with staff working thereon and ancillary vehicles and staff working there on vide Annex.R 7/7, vide order dated 13.5.1980 the corresponding posts were created in PHED department.

By order dated 5th August, 1980 Annex.R-7/8, it was made clear that hand pump scheme along with the machinery and staff have been transferred from Ground Water Department to Public Health Engineering Department vide Government order dated 21.2.1980 of even number. To this effect, certain posts in Ground Water Department in connection with construction, maintenance of hand pump schemes transferred to P.H.E.D. were abolished w.e.f. 1.4.1980.

It is also noticed above that along with transfer of hand pump scheme with machines and men deployed thereunder, vacant posts and unfilled posts in Ground Water Department relating to hand pump construction programme, which concerned the Public Health Engineering Department, were also transferred to be filled by the PHED w.e.f. 1.4.1980.

These orders unequivocally establish and show that by way of administrative decision taken in consideration of better efficient economic management of the two departments by the Economy Committee of the State Government, the rigs along with the staff working thereon, ancillary machines and staff was shifted from G.W.D. and placed under P.H.E.D. w.e.f. 1.4.1980 and for that purpose corresponding posts were created under the PHED by the order of the Governor

and the corresponding posts which were not required in relation to such schemes in Ground Water Department were also abolished. Substantially, it was a case of restructuring of two departments by transfer of hand pumps drilling machines and all ancillary machines and spares along with man-power to be administered by Public Health Engineering Department.

Be that as it may, since the Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967 and the Rajasthan Service of Engineers and Allied Posts (Public Health Branch) Rules, 1968 did not have the posts of Drilling Assistants and drilling department concerning the operation of hand pumps as arising since the shifting of the hand pump drilling rigs to the Public Health Engineering Department, about their status and further progress in the service in PHED department, the officers or the staff employee in subordinate services after 1.4.1980 as well as the persons who were transferred with shifting of rigs w.e.f. 1.4.1980 were not being accorded promotions and revision of pay scales by PHED Department on the ground that they are not members of Public Health Engineering Services. Since the rigs of GWD has been shifted to PHED and has been placed under its supervision, the salary was also to be paid by the PHED.

This led to a series of litigation. In this connection, to the first case to which reference has been made in the petition is S.B. Civil Writ Petition No.3288/1984 which was decided on 13th Feb., 1986. It appears that the aforesaid facts about transferring of drilling rigs along with the staff working thereon through the aforesaid orders had not been brought to the notice of the court and the grievance was raised that the petitioner who was working as Assistant Driller is not being promoted but direct appointments are taking place to the next higher post thus, denying the chances of promotion to the already working staff on Hand Pump Division so transferred to P.H.E.D. The State Government has taken the stand that in the absence of any rules governing the transferred staff from G.W.D., it is unable to consider the case of promotion. In these circumstances, taking into consideration the rival contentions, the writ petition was disposed of with the direction to the respondents to finalise the rules within a period of six months and, thereafter, consider persons eligible for promotion to the higher post. It was also ordered that promotions shall be made within a period of 6 months and till then no appointment may be made by way of direct recruitment, taking into account the complaint made by the petitioner that continuous direct

recruitment shall jeopardise the promotion, if the appointment by direct recruitment is made. The D.B. Special Appeal (W) No.850/1986 against the aforesaid order preferred by the State was also dismissed by the Division Bench on 8.7.1987.

Next litigation to which reference has been made was taken up in PHED Diploma Holder Drillers Association Vs. State of Rajasthan by way of D.B. Civil Writ Petition No.874/1988 at Jaipur. The said writ petition was decided on 1st Feb., 1989. The order noticed that the diploma holders were offered appointment in September 1980 and 47 persons were appointed on the posts of Assistant Drillers vide order dated 17.11.1980 in the pay scale of Rs.385-10-415-15-490-20-650 and 30 persons were again appointed to the said post vide order dated 25.2.1981 (Annex.3) and they have been working on work-charge basis. The complaint in the writ petition was raised about not giving these persons, the benefit of revised pay scale though they have been given permanent status. The court noticed the decision rendered in Nandlal's case referred to above and and also noticed that the rules have not been finalised till then and published. The State Government took the stand that the matter is now under consideration to provide regular pay scale and regular appointment by making amendments in the

Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967. A copy of the proposed amendment in rules were also placed before the Court which had been approved by the Rajasthan Public Service Commission. Taking into notice all these facts, the Court allowed writ petition and directed the respondents that the members of the petitioner Association, who were appointed as Assistant Drillers, are eligible to be considered for promotion to the higher post within a period of four months from the date of order and to consider the cases of the members of the petitioner association as aforesaid for regularisation in terms of the order of the Government dated 23.7.1983 with regard to revision of pay scale of work charge employees.

It may be noticed here that this petition related to all the workmen appointed for drilling work in PHED Department after 1.4.1980 w.e.f, the date the hand pump drilling scheme of the Ground Water Department relating to Public Health Engineering Department had been transferred along with its staff and vacant posts. And these persons had been appointed in the drilling department after it has come under PHED.

In this connection, reference has also been

made to a decision of the learned Single Judge in S.B. Civil Writ Petition No.3065/1989 Drillers Association Vs. State decided on 23rd Jan., 1990. The also appears from the perusal of the judgment that in earlier two writ petitions, the controversy raised in the writ petition was noticed by the Court by referring to the writ petition filed by Nandlal referred to above claiming that the Assistant Drillers working in PHED are not being accorded promotions and direct recruitment is made on higher posts, therefore, the persons, who are entitled to promotion, had to suffer. The Court also took notice of the direction issued by the learned Single Judge in the writ petition filed by Nand Lal. The Court also referred to the Division Bench decision referred to above. This petition related to parity of pay scale between the pay scale to diploma holders and degree holders. Noticing that the State has failed to frame the rules within the limit prescribed by the Court, the Court held that the petitioners are entitled to be considered for promotion within three months from the date of judgment. The respondents were directed to consider their cases within the aforesaid period and though they were not given their regular pay scales of the post of Drillers from the date they were asked to work on the post of Driller, but were ordered to be paid minimum of the pay scale of the post of Driller

mentioned in Annexure 8 of the said writ petition. The judgment also took notice of the order and the circumstances under which drilling machines along with its staff came under the control of PHED and the employees of G.W.D. became employees under it w.e.f. 1.4.1980.

Then a writ petition was filed by one Deepak Raj Mittal being S.B. Civil Writ Petition No.2042/1988 at Jaipur who had appeared at a combined examination for recruitment to both the departments; Ground Water Department as well as Public Health Engineering Department for the post of Assistant Engineer and on being selected, he was appointed on the post of Assistant Engineer on 30th July, 1974 in Ground Water Department and by order on 1.4.1980, he came under the PHED by virtue of transfer of drilling rigs for hand pump construction relating to Public Health Engineering Department in pursuance to the orders dated 21st Feb., 1980 referred to above. The Court after taking notice of all the orders, was of the opinion that "the petitioner is right that he was not transferred to Public Health Engineering Department, on deputation by his consent. The men and material of Tube-well Drilling Wing was as such transferred from Ground Water Department to the Public Health Engineering Department and the proposal of the

Government was that necessary posts for operating rigs were also created by Annexure 5 in the Public Health Engineering Department. The proposal clearly is to make provisions for absorption of the staff transferred from Ground Water Department to the Public Health Engineering Department. Then alone, the petitioner will become a member of service in the Public Health Engineering Department. The State of Rajasthan assures that it proposes to do so, but it does not explain why it has not done so far for last more than six years and on non-formation of the Rules by the Public Health Engineering Department".

The writ petition was allowed and the State Government was directed once again to carry out necessary amendments in the Rajasthan Service of Engineers and Allied Posts (Public Health Branch) Rules, 1968 for absorption of the petitioner as Assistant Engineer in the Public Health Engineering Department from the date he joined the Department within a period of three months from this date.

Apparently the direction was clearly in terms for the formation of the rules with effect from the date rigs along with the staff were transferred from Ground Water Department to Public Health Engineering Department on 1.4.1980 with further

direction to declare surplus employees and absorb them in future. This is the first judgment that notice the chain of events in which the posts under hand pump drilling scheme under Ground Water Department came to be transferred in PHED w.e.f. 1.4.1980 and that Drilling Rigs carried with its staff working under it under orders on which reference has been made above. The direction was issued to amend the Rules to give necessary effect of making the petitioner as a part of post under P.H.E.D. w.e.f. 1.4.1980 when he was transferred from Ground Water Department to Public Health Engineering Department along with transfer of work.

Still amendment in the Rules did not come forward and three writ petitions came to be filed at Jodhpur by way of S.B. Civil Writ Petitions No.493/1991, 494/91 and 4677/1989. In this decision, the Court took notice and expressed its anguish that while a policy decision was taken by the government whereby the drilling of tube-wells for handpump scheme to provide drinking water was transferred from G.W.D. to Public Health Engineering Department, the drilling rigs along with the entire supporting staff were also transferred to the PHED. This was done vide Annex.2 dated 21.2.1980. Besides the aforesaid staff, certain vacant posts were also handed over to P.H.E.D. for

this purpose. Besides this, posts of three Assistant Engineers, six Supervisors and some other staff were also ordered to be transferred. The Court also noticed that subordinate staff be also recruited thereafter by the P.H.E.D. in terms of these orders. With this background, the Court stated that the result was that the services of petitioner Bhanwar Lal Choudhary and his like stood transferred to P.H.E.D. and the posts in G.W.D. stood abolished. In view of the stand taken by the two departments and the Government not taking action promptly, it has resulted that the employees of the erstwhile department of G.W.D.. have suffered stagnation over the years and have not been able to secure promotional benefits in the adoptive department, i.e. P.H.E.D. It appears that they are nobody's baby because G.W.D washed off its hands from these employees, as they no longer belonged to it. The adoptive department, also did not exhibit due concern for these helpless employees. Keeping in view this background, the Court directed the Chief Secretary of the State of Rajasthan to take necessary action within a period of 20 days from the date of order, which is to be brought to the notice by Dy. Government Advocate keeping in view the observations made in Deepak Raj Mittal's case to which I have already mentioned above, which was decided at Jaipur on 3.1.1999 (S.B. Civil Writ Petition

No.2042/1988).

Thus, in pursuance of this direction, Annex.10 has been issued and a corrigendum Annex.11 was issued later on.

This writ petition has been preferred before this Court challenging the order of absorption.

The only contention raised before me by learned counsel for the petitioner Association is that since absorption has taken place vide order dated 20th Dec., 1991 the junior most persons working in the Ground Water Department only could have been declared surplus and absorbed elsewhere by retaining the persons who were seniors in the Ground Water Department. But by retaining juniors in Ground Water Department, the Rules have been violated which has resulted in giving wrong effect to the seniority in the PHED, contrary to the Rules. It was also pointed out that during this period, after all these litigations, some of the persons have already been confirmed or given promotions in their parent departments vide some orders placed on record. According to the learned counsel, as per the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 whenever in a department, posts are

abolished and certain persons are declared surplus, junior most persons are to be declared surplus and it cannot be said that while junior persons are retained, Senior persons can be declared surplus for absorption in another place. This is so because declaration of surplus on certain posts results in absorption in other departments following their migration from one department to another department and assigning them inter se seniority with the existing employees of the transferee department which results in upsetting the existing seniority position in the transferee department. Due to that effect, since the rule of last come first go be declared surplus was not followed taking the existing position as on the date of making the two impugned orders, by treating the entire transferred staff of G.W.D. to be member of G.W.D. Service until that date renders this absorption order dated 20th Dec., 1991 illegal and invalid.

The contention in the background of the dispute appears to be misconceived and unsustainable. I have noticed above the facts and circumstances which led to transfer of the drilling rigs for construction of tubewell pertaining to Public Health Engineering Department in public interest w.e.f. 1.4.1980 from the Ground Water Department. That is to say prior to that date, the construction of hand pumps was being taken

by Ground Water Department and the posts meant for operating the rigs and ancillary machines were also encadered in Ground Water Department. However, with effect from 1.4.1980 the hand pump scheme along with man and machine came under P.H.E.D. as a result of policy decision taken by the State Government in the interest of rationality the working on the scheme meant for ameliorating drinking water supply, which is primary concern of P.H.E.D. and to economise on public expenditure. With transfer of the work which was being done by the Ground Water Department to PHED, it was also envisaged by the Government at that very time that the Staff working at the machines and related posts along with vacant and unskilled posts relating to said work should go along with the transfer of rigs for their proper functioning w.e.f. 1.4.1980. Therefore, the transfer of the staff took place simultaneously on 1.4.1980. It was also envisaged that the sanctioned posts which were lying vacant shall be filled by P.H.E.D. Meaning thereby that the future progress, growth, appointments and promotions concerning the persons managing the drilling rigs so transferred to PHED will be done under the PHED. If all the orders referred to above are read in conjunction, it creates no doubt in mind that it was a case of reconstruction to two departments for carrying out activities of both the departments with better

control and economic efficiency by transferring that work to P.H.E.D. which was otherwise ought to have been with it but was being shared by Ground Water Department. It was an executive decision founded on sound reasons and implemented in pursuance of the Government order dated 21.2.1980. It was not a case of abolition of certain posts in particular department rendering certain posts surplus in that department needing their absorption elsewhere. The employees managing such posts were to loose their jobs. Pending absorption of such employees, they are placed under department of General Administration (GAD) without affecting their status in any manner. It was a clear case of transfer of a work with staff from one department to another by an act of State and consequently, it did not involve a case of rendering service of a person as surplus and absorption of such surplus employees from one department to another department on equivalent and equated posts. It was a case of grafting one segment of work as it is from one department to another with same work, same man with same designation and status in service. Since the matter of restructuring department is not governed by legislative rules, it rests within the executive power of State to carry out such reconstruction and restructuring of any department uneffected by other rules.

In my opinion, it is clear that with effect from 1.4.1980 the transferred staff became the member of PHED as posts were also created in PHED with work corresponding to post held by respective employees on the date of transfer. It may be noticed in the chain of events that on transfer of the rigs with staff, firstly posts were created for the staff in PHED which were to be transferred to PHED. Thereafter, the posts which existed in GWD for the purpose of hand pump construction to be transferred to PHED were abolished.

It is not even the case of the petitioner that any person working on the post abolished vide order dated 5th August, 1980 were declared surplus and thereafter handed over to PHED for absorption. Even if declaration of surplus were to take place it would be as on the date when the posts were abolished. Declaration of surplus could not await the date when the actual absorption may take place in future as in the case the orders have been made only in 1991. The drilling rigs meant for hand pump constructions along with other machinery and staff when stood transferred to the Public Health Engineering Department w.e.f. 1.4.1980. The transfer became complete. The only question of giving it a legal format under the rule for those persons who became the members of the PHED

service. If any formalities are required to be carried out by the State Government, it would not make and postpone the date of their absorptions in PHED to a later date from the Ground Water Department. Nor such employees continued to be member of GWD.

To the same conclusion, the learned Single Judge of this Court reached by noticing these orders vide judgment dated 3rd Jan., 1990 in Deepak Raj Mittal's case where the Court directed to make necessary absorption orders by amending the Rules with effect from the date, he joined the department i.e. to say from 1.4.1980. If the absorption should take place w.e.f. 1.4.1980, the contention raised by the learned Counsel for the petitioner that the status of personnel in service in GWD as on the date the impugned order dated 20th Dec., 1991 was made, should be the criterion for declaring the junior most persons as surplus of the GWD department does not survive because as on 1.4.1980 many persons who are employees of G.W.D. may not even be in service.

One important aspect which the contention of petitioner over-looks is that it is not necessary that declaration of surplus and absorption of surplus personnel takes place simultaneously. In the very state of things, declaration of surplus precedes

absorption. There is bound to be a hiatus between the two ends. It is only the state of affairs existing on 1.4.1980, which is to be taken into account in case of declaration and absorption of surplus employees. Subsequent absorption in the present case vide impugned order is taken to be a true outcome of the aforesaid transfer of drilling rig along with the staff to the P.H.E.D. w.e.f. 1.4.1980.

It is further apparent from the facts stated in the reply to the writ petition that the petition is filed on behalf of the persons who have all been recruited in the pay scale of 380-650 in January 1982 by PHED after vacant posts with the drilling rigs stood transferred to PHED to be filled by it. I may also notice that in the writ petition nothing has been mentioned about the interest which the petitioner association represents as such. Apparently, the statement of fact referred in the reply appears to be near truth. Those persons who have already been appointed in PHED prior to 1.4.1980, the transfer of persons from Ground Water Department to P.H.E.D. and their assignment of seniority on the basis of continuation of service would not have been affected. But the persons who have been appointed as Assistant Driller or on any post relating to the said hand pump construction scheme after 1.4.1980, since they are

appointed under PHED by the orders of PHED continuously remained in PHED and the date of declaration of surplus is taken to be 29th Dec., 1991 then the persons appointed after 1982 in Ground Water Department must be declared surplus and the persons already senior to them and appointed much earlier to them under PHED w.e.f. 1.4.1980 may be asked to go out of PHED to make room for such employees appointed after them on posts transferred from GWD to PHED to become senior in cadre from those employees by way of declaration of surplus and absorption. However, the facts disclosed by the respondents show that the appointments in the drilling rigs in 1982 after 1.4.1980 is only a consequence of shifting of drilling rigs along with its ancillary machine and staff w.e.f. 1.4.1980 along with the vacant posts. If the appointment of existing employees in PHED as a result of transfer of the operative department itself w.e.f. 1.4.1980 goes, the appointments of these persons appointed under PHED against the vacant posts and their appointments under PHED after 1.4.1980 must also go.

It can only be said that had these facts were placed properly before the Court in the very first instance, this multiple litigation would have been avoided and the court could very well have

reached the same conclusion that this being an administrative exigency in which the two departments have been restructured by creating the posts under P.H.E.D. and abolish the post in GWD, the persons who stood transfered along with the work resulted in the inclusion of the hand pump scheme itself and their services in Public Health Engineering Department or the subordinate service as the case may be, making them entitled for promotions under the Rules of 1967 or 1968, as the case may be. It may be noticed that amongst the employees transferred included members of subordinate service as well as of State services and their status too stood engrafted correspondingly in subordinate and State services. It was not a transfer of temporary work. It was not a case that on the existing post or existing work of the PHED certain persons have been transferred from another department so dispute can be raised that there is no provision for appointment to a post under the department by transfer. In my opinion, there cannot be any exigency of absorption in the case of reconstruction and restructure of any department as a result of which posts of one department can become posts of another department and the result of which would automatically that after amalgamation or hiring of the department, the department under which the employees of another department are placed, takes the responsibility of

such employees as if they are the members of its service.

In this view of the matter, in the totality of the circumstances, I do not find any merit in this writ petition as it is not a case where the persons from Ground Water Department were declared surplus in 1991 but it is a case of persons who came to be engrafted in PHED w.e.f. 1.4.1980 and it is only the regularisation of their status in PHED w.e.f. 1.4.1980 in pursuance of directions given by this Court as the order itself refers to the fact that the petitioner seeks seniority by over-looking the background of the case and direction of the Court on hyper technical grounds. The provisions of the Rules of 1969, in my opinion, do not govern the circumstances like the present and has to be decided on its own background.

The petition fails and is hereby dismissed. No order as to costs.

[ RAJESH BALIA ], J.

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